

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA McDOWELL,

Plaintiff,

v.

Case No. 06-11295

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL
SECURITY,

Honorable Patrick J. Duggan

Defendant.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on December 21, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff Linda McDowell applied for Supplemental Security Income on February 12, 2003, alleging that she had been disabled since November 1, 2000, due to sleep apnea, rheumatoid arthritis, asthma, chronic obstructive pulmonary disease, degenerative disc disease, and depression. The Social Security Administration denied Plaintiff benefits on May 15, 2003. A de novo hearing was held on October 22, 2004, before an Administrative Law Judge ("ALJ").

On November 19, 2004, the ALJ found that although the combination of Plaintiff's medical impairments were "severe" within the meaning of 20 C.F.R. § 416.920(b), the

medical impairments did not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Part 404 of the regulations. (Tr. at 19). The ALJ then assessed Plaintiff's Residual Functional Capacity ("RFC") and determined that although Plaintiff cannot perform her past relevant work, (*id.* at 20), based on a vocational expert's testimony, a hypothetical worker of Plaintiff's age, education, and past work experience could make a vocational adjustment to work that exists in significant numbers in the national economy. (*Id.* at 21). Consequently, the ALJ determined that Plaintiff was not under a "disability," as defined by the Social Security Act, 42 U.S.C. § 1382c(a)(3); 20 C.F.R. § 416.920. (*Id.* at 22). The ALJ's decision became the Commissioner's final decision when the Appeals Council denied Plaintiff's request for review. (*See* Tr. at 4).

On March 29, 2006, Plaintiff sought judicial review of the Commissioner's final decision in this Court pursuant to 42 U.S.C. § 405(g). On August 3, 2006, Plaintiff filed her Motion for Summary Judgment and on August 20, 2006, Defendant, the Commissioner of Social Security, filed her Motion for Summary Judgment. Both motions were referred to Magistrate Judge R. Steven Whalen.

On November 2, 2006, Magistrate Judge Whalen filed his Report and Recommendation ("R&R") recommending that this Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment. At the conclusion of the R&R, Magistrate Judge Whalen advises the parties that they may object and seek review of the R&R within ten days of service upon them. The R&R also advised the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (R&R at 15)(citing *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 46

(1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981)). Neither party has filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with Magistrate Judge Whalen's conclusion that Defendant's Motion for Summary Judgment should be granted and that Plaintiff's Motion for Summary Judgment should be denied.

Accordingly,

IT IS ORDERED that Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiff's Motion for Summary Judgment is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Mikel E. Lupisella, Esq.
AUSA Janet Parker
Magistrate Judge R. Steven Whalen